

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EUGENE LAMAR HAMILTON,

Plaintiff,

vs.

T. RODRIGUEZ, et. al.,

Defendants.

No. C 12-4697 PJH (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, an inmate at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

1 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
2 requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
4 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
5 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
6 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
7 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
8 framework of a complaint, they must be supported by factual allegations. When there are
9 well-pleaded factual allegations, a court should assume their veracity and then determine
10 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
11 1937, 1950 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **B. Legal Claims**

17 Plaintiff has filed three complaints in this action, and the court has screened the
18 most recent complaint. Docket No. 4. Plaintiff names approximately twenty defendants
19 and states that they planted inmate manufactured weapons in plaintiff's wheelchair and
20 then conspired to have plaintiff found guilty at a disciplinary hearing. As a result of the
21 guilty finding, plaintiff states he was assessed a twelve month loss of time credits. Petition
22 at 14, 36, 40. Plaintiff seeks monetary damages and expungement of the disciplinary
23 finding from his record.

24 This claim appears to be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In
25 *Heck* the United States Supreme Court held that in order to recover damages for an
26 allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions
27 whose unlawfulness would render a conviction or sentence invalid, a plaintiff must prove
28 that the conviction or sentence has been reversed on direct appeal, expunged by executive

1 order, declared invalid by a state tribunal authorized to make such determination, or called
2 into question by a federal court's issuance of a writ of habeas corpus. *Id.* at 486-487. A
3 claim for damages arising from a conviction or sentence that has not been so invalidated is
4 not cognizable under section 1983. *Id.* *Heck* has been extended to prison disciplinary
5 hearings where time credits were affected. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997)

6 When a state prisoner seeks damages in a section 1983 suit, the district court must
7 consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of
8 his continued confinement; if it would, the complaint must be dismissed unless the plaintiff
9 can demonstrate that the conviction or sentence has already been invalidated. *Id.* at 487.

10 It does not appear this disciplinary finding has been invalidated, so this claim must
11 be dismissed, though plaintiff will be provided an opportunity to demonstrate the reversal of
12 the finding. See *Trimble v. City of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (claims
13 barred by *Heck* may be dismissed sua sponte without prejudice).

14 CONCLUSION

15 1. The complaint is **DISMISSED** with leave to amend in accordance with the
16 standards set forth above. The amended complaint must be filed no later than **February 7,**
17 **2013**, and must include the caption and civil case number used in this order and the words
18 AMENDED COMPLAINT on the first page. Because an amended complaint completely
19 replaces the original complaint, plaintiff must include in it all the claims he wishes to
20 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
21 incorporate material from the original complaint by reference. Failure to amend within the
22 designated time will result in the dismissal of these claims.

23 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
24 court informed of any change of address by filing a separate paper with the clerk headed
25 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
26 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
27 Federal Rule of Civil Procedure 41(b).

28 ///

IT IS SO ORDERED.

Dated: January 7, 2013.



PHYLLIS J. HAMILTON
United States District Judge

G:\PRO-SE\PJH\CR.12\Hamilton4697.dwlta.wpd